



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Pete T. Cenarrusa, Secretary of State

Alan G. Lance, Attorney General

J. D. Williams, State Controller

Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting March 13, 2001

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, March 13, 2001 in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa

Honorable State Controller J. D. Williams

Secretary to the Board Winston A Wiggins

Superintendent of Public Instruction Marilyn Howard participated via conference phone beginning at 9:40 a.m. Attorney General Alan Lance was absent for this meeting.

• **CONSENT AGENDA**

Acting Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Secretary of State Cenarrusa to approve the Consent Agenda in its entirety. State Controller Williams seconded the motion. The motion carried on a vote of 3-0, with Superintendent Howard and Attorney General Lance being absent for this vote.

1. Official Transactions – approved

- A. Interest Rate Report – February 2001
- B. Bureau of Minerals Official Transactions – February 2001
- C. Timber Sale Official Transactions – January 23, 2001 through February 21, 2001
- D. Bureau of Real Estate, Land Sale Section, Official Transactions – January 2001
- E. Bureau of Real Estate, Easement Section, Official Transactions – January 2001
- F. Bureau of Range Management and Surface Leasing Official Transactions – February 2001

2. Timber Sales – Staffed by Bob Helmer, Acting Chief, Bureau of Forest Management – approved

- | | | |
|--------------|------------------|------------------------------|
| A. CR-1-0318 | Rimrock Poles | 250 MBF / 88,575 lineal feet |
| B. CR-3-0434 | Rooney-Finn | 2,890 MBF |
| C. CR-3-0435 | Upper Bond Creek | 2,750 MBF |
| D. CR-4-0707 | West Ruby | 3,235 MBF |
| E. CR-4-0737 | Drift-Alder Pole | 180 MBF / 92,525 lineal feet |
| F. CR-5-0091 | Indian Mountain | 3,235 MBF |
| G. CR-5-0099 | The Narrows | 6,820 MBF |
| H. CR-8-0090 | Upper Cottonwood | 2,600 MBF |

3. Application for Qualified Bidders List, Timber Sales – Staffed by Bob Helmer, Acting Chief, Bureau of Forest Management – **approved**

A. Titus Logging, Inc., Post Office Box 19, St. Maries, Idaho 83861

4. Alta Gold, Cancellation of Reclamation Plan 600 – Staffed by Scott Nichols, Chief, Bureau of Minerals – **approved**

DEPARTMENT RECOMMENDATION: That the board authorize the department to:

1. Terminate Reclamation Plan No. RP-600.
2. Forfeit Zion's First National Bank Certificate of Deposit No. 221739 in the amount of \$32,500.00 and direct the department to utilize the bond funds to complete the necessary reclamation on this property.

BOARD ACTION: Approved.

5. Results of Auction for Lease G-4193, Moriarity Creek Allotment – Staffed by Tracy Behrens, Range Management Specialist – **approved**

DEPARTMENT RECOMMENDATION: That the board accept the high bid of \$200 submitted by Ray Holes, Lazy H Livestock, and that Lazy H Livestock be issued a new ten-year lease. The lease will include a management agreement based upon the management proposal submitted by Lazy H Livestock and agreed to by the department.

BOARD ACTION: Approved.

6. Grazing Lease Management Proposals Policy Amendment – Staffed by Tracy Behrens, Range Management Specialist – **approved**

DEPARTMENT RECOMMENDATION: That the board adopt the following policy relating to all grazing lease applications:

All applicants for grazing leases must submit a grazing management proposal no later than thirty (30) days after the deadline for applying for the grazing lease. If the lease is conflicted, each applicant will be provided a copy of the other applicant's management proposal no later than two (2) weeks prior to the auction.

BOARD ACTION: Approved.

7. Bear Claw Trading Post, Review/Approve RFP – Staffed by Jude Gary, Commercial Leasing Specialist – **approved**

DEPARTMENT RECOMMENDATION: That the board approve a ten-year lease that provides for a preferential right to renew for one additional ten-year period.

BOARD ACTION: Approved.

8. Land Classification – Staffed by Winston Wiggins, Acting Director, Jay Biladeau, Assistant Director, Lands, Range, Minerals and Ron Litz, Acting Assistant Director, Forestry, Fire – **approved**

DEPARTMENT RECOMMENDATION: That the board adopt the proposed policy and direct the department to make land management decisions accordingly.

BOARD ACTION: Approved.

9. Adjust Rental on IDL Administrative Site Leases – Staffed by Bob Snapp, Leasing Specialist – approved

DEPARTMENT RECOMMENDATION: Direct the department to pay administrative site lease rentals only for non-endowment activities at administrative sites on endowment land based on a site-specific percentage determined by the department. Should activities at an administrative site located on land belonging to one endowed institution support activities on land belonging to other endowed institutions, the department will make appropriate transfers of funds between those endowments within the Earnings Reserve account.

BOARD ACTION: Approved.

10. Authorization for RFP, Hollipark Property in Idaho Falls – Staffed by Jude Gary, Commercial Leasing Specialist – approved

DEPARTMENT RECOMMENDATION: That the board authorize the department to begin marketing the Hollipark property through a Request for Proposals.

BOARD ACTION: Approved.

11. Request for Conceptual Approval to Initiate the Willow Bay Land Exchange Involving U. S. Bureau of Reclamation and the State – Staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: That the board give conceptual approval to initiate an exchange with the Bureau of Reclamation and the Bureau of Land Management. Once an equal value package has been developed and agreed upon, the department will seek final approval to complete the trade.

BOARD ACTION: Approved.

12. Boise River Disclaimer – Request for Approval of Disclaimer of Interest to Larry and Sharon Shideler on 6.75 Acres of Accretion Land Adjacent to the Boise River in Ada County – Staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: That a disclaimer of interest be issued for this parcel of accretion land contingent upon: 1) the applicant granting to the Idaho Fish and Game Department a conservation easement in two areas identified on Attachment 2, said easement totaling 8.23 acres, more or less; and 2) the applicant granting to Ada County a 25-foot wide permanent greenbelt easement for approximately 0.30 of a mile along the ordinary high water mark along the left (south) boundary of the Boise River, which is the entire length of the applicant's river frontage. The recommended fee is \$600.00.

BOARD ACTION: Approved.

13. Boise River Disclaimer – Request for Approval of Disclaimer of Interest to the Phariss Family Trust on 26.60 Acres of Accretion Land Adjacent to the Boise River in Canyon County – Staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: That a disclaimer of interest be issued for this parcel of accretion land contingent upon: 1) the applicant granting to Canyon County a 25-foot wide permanent greenbelt pedestrian easement for approximately 0.60 of a mile along the ordinary high water mark along the right (north) boundary of the Boise River, which is the entire length of the applicant's river frontage; and 2) the applicant granting to the State of Idaho a disclaimer of interest of 7.00 acres, more or less, for the current riverbed lying adjacent to the applicant's property. The recommended fee is \$600.00.

BOARD ACTION: Approved.

14. Minutes – approved

A. Regular Land Board Meeting – February 13, 2001

• **REGULAR AGENDA**

15. Endowment Fund Investment Board Manager's Report (EFIB) – Presented by Charles G. Saums, Manager of Investments

February 2001

Total Market Value of Endowment Funds	804,878,401
Total Market Value of Permanent Corpus	805,246,105
Total Market Value of Earnings Reserve.....	(367,704)

Mr. Saums. Mr. Saums stated that from November 24, 2000 to March 2, 2001, the S&P 500 was down 18.33% and the NASDAQ was down 57.2%. The Fund had a positive mark to market in January and that positive eroded to a negative mark to market of about \$50 million. Mr. Saums commented that this is an example of how fast the market has moved and also is an example of the volatility that the Fund has experienced.

The EFIB has two important jobs. One job is to pay the beneficiaries. Mr. Saums stated that there is no problem in doing that job. The second job is to develop a good program and that is a long-term job. Mr. Saums stated that right now things look a little bleak but he believes that the market will come back and that the board should stay the course.

Mr. Saums introduced Steve P. Bendinelli, Vice President, Investment Management Services, Sutro & Company. Mr. Bendinelli provided a quarterly review for the board.

Mr. Bendinelli. Mr. Bendinelli stated that in five of the last twenty top years, growth was the winner. In five of the last twenty years, foreign was the winner. In five of the last twenty years, small value was the winner. In three years of the last twenty years, bonds were the winners and in two years of the last twenty years, small growth was the winner. Mr. Bendinelli stated these figures reinforce the notion that efficient asset allocation, and a multi-diversified asset allocation beyond fixed income in the multiple asset classes, makes a lot of sense for a plan of this type. The numbers show that Idaho has a well thought out asset allocation.

Mr. Bendinelli went on to explain the Quarterly Report presented to the board. The report contains four sections:

Section 1. Statement of Investment Policy Compliance

- Section 2. Allocation by Assets by Manager
Performance Results by Manager
- Section 3. Manager Peer Group Analysis
- Section 4. Manager Risk/Return Characteristics

Mr. Bendinelli stated it is very easy in these days of the market being down to tend to develop a myopic view. Market timing and trying to tweak the allocation short term, and market timing or tactically reallocating, is a challenging game. Mr. Bendinelli stated his firm believes that most people should buy a long-term strategic asset allocation, such as the kind of allocation that the board has in place. Mr. Bendinelli recommended that the board allow time for that allocation to work.

DISCUSSION: Governor Kempthorne asked Mr. Saums how often the board would review the ranking of the managers. Mr. Saums responded that the board will receive a report on a quarterly basis. If a manager is under performing for two quarters in a row, Mr. Saums stated that the manager would be visited to find out if there has been any change in style that is creating a problem. Four quarters in a row and that manager will be removed.

The EFIB Manager's Report is provided monthly for the board's information.

BOARD ACTION: No action was taken on this agenda item.

16. Tussock Moth Project Payments – Staffed by Ladd Livingston, Forest Insect and Disease Supervisor

A. Request for Deficiency Warrant Authority

DEPARTMENT RECOMMENDATION: That the board authorize emergency Deficiency Warrant Authority for the Douglas-fir tussock moth treatment program for FY-2001 and FY-2002.

BOARD ACTION: A motion was made by Secretary of State Cenarrusa to accept the department's recommendation. Controller Williams seconded the motion. The motion carried on a vote of 3-0 with Superintendent Howard and Attorney General Lance being absent for this vote.

B. Cost Share Payments

DEPARTMENT RECOMMENDATION: That the board direct the department to:

1. Treat the current outbreak of the Douglas-fir tussock moth on those acres determined by field evaluation to warrant treatment.
2. Require that private landowners that wish to have their land treated enter into a cooperative agreement with the state whereby the landowner agrees to pay 10% of the cost of treatment on their property.
3. Prorate, on a per acre basis, the remaining balance in the forest pest account to offset treatment cost on private.
4. Continue to pursue acquisition of federal funds to contribute to treatment costs on the condition that should such funds become available, they will be deposited into the general account of the State of Idaho.

DISCUSSION: Governor Kempthorne asked for the recommendation of the department. Mr. Litz responded that the recommendation of the department is Option 2: the private landowners would pay 10% and the state would pay 90%. The department feels that when private parties participate in the endeavor there is a better ownership in the overall treatment.

AUDIENCES WITH THE BOARD

AUDIENCE WITH THE BOARD: Representative Tom Trail

Representative Trail. Representative Trail thanked the Land Board and the Department of Lands for their efforts in working with the constituents of Benewah and Latah counties regarding the recent tussock moth outbreak. With the rural economy being depressed at this time, the tussock moth outbreak, with an estimated potential of \$45 million in damage, would further aggravate the situation. Representative Trail stated he supports the department's recommendation.

AUDIENCE WITH THE BOARD: Representative Dick Harwood

Representative Harwood. Representative Harwood thanked the Land Board and the Department of Lands for their help. He stated that the tussock moth outbreak has created a difficult situation in an area that is already having a tough time financially and economically.

AUDIENCE WITH THE BOARD: Representative Gary Young

Representative Young. Representative Young also thanked the Land Board for working with constituents in trying to identify the problem, needs and avenues for control of the tussock moth outbreak. Representative Young believes that the current situation has long range implications. If the outbreak is not treated, it could be very expensive to the area over the years. Representative Young feels that the 90-10 is a fair course to pursue. He also agrees that when people have a little bit of investment in the effort, they take more ownership in it and it has more value to them. He stated he supports the department's recommendation.

DISCUSSION: Secretary of State Cenarrusa asked if any of the Representatives have a preference on the department's recommendation. The department recommends #2 where the state would pay 90% and the private landowners would pay 10%. Representatives Trail and Young stated they do support that recommendation. Representative Harwood stated he would be more appreciative of the state paying 100% because of the economics in his particular area. Representative Harwood stated his district is hurting due to Benewah County's 16% unemployment rate.

Representative Young stated that the unemployment rate varies by area. Latah County is down around 4% to 5%. The rate is dependent upon business opportunities in the area. Logging areas have a high unemployment rate and people are suffering. Representative Harwood stated he called the Job Service recently and he was told that Clearwater County is in the top ten in the nation for the highest unemployment rate.

Controller Williams asked for a clarification of the department's recommendation. Mr. Litz responded that the department is asking for the authority to fund the effort and then the department would ask the private landowners to reimburse the department for their proportionate share. The deficiency warrants would be paid from the general fund. The department's proposal is that it deplete the existing pest account on a per-acre basis with different landowners and then that the landowners share in the remaining cost at a 10% rate. The department would use the deficiency warrant for the state portion of the expenditures with the landowner making up the remainder.

AUDIENCE WITH THE BOARD: Jane Gorsuch, Intermountain Forest Association (IFA)

Ms. Gorsuch: Ms. Gorsuch stated that IFA has discussed this issue with the Department of Lands. IFA has also coordinated with the Joint Finance and Appropriations Committee to work through the process of setting up the increase in the deficiency warrant cap. IFA feels that the department's recommended 90-10 split is a significant improvement over what has occurred in the past.

DISCUSSION: Controller Williams commented that it is not very often that the board has a chance to send a signal to show that it is really concerned. He commented that there is not a lot that the board can do because timber has to be sold at market value. The board realizes there are a lot of hurting people in those areas. Controller Williams suggested that, in the interest of the endowment, there is justification to recommend a 95-5 cost share.

BOARD ACTION: A motion was made by Controller Williams to accept the department's recommendation with a modification to #2. Item #2 will be modified to state that private landowners who wish to have their land treated will enter into a cooperative agreement with the state whereby the landowner agrees to pay 5% of the cost of treatment on their property. The State of Idaho will bear the remaining 95% of the treatment cost. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 3-0 with Superintendent Howard and Attorney General Lance being absent for this vote.

- For clarification of the record, Governor Kempthorne stated that this decision is based upon the current situation wherein an economic down period and a high unemployment rate is being experienced. The outbreak of tussock moth has created an extraordinary situation that needs to be addressed immediately. The board is making this gesture in response to the state of the economy in the timber industry.

17. Pickett Ranch Grazing Lease Appeal - Staffed by Tracy Behrens, Range Management Specialist – Presented by Jay Biladeau, Assistant Director, Lands, Range, Minerals

DEPARTMENT RECOMMENDATION:

1. That the board reject the high bid of \$14,000 submitted by IWP, accept the bid of \$13,000 submitted by Pickett and issue a new ten-year grazing lease to Pickett that includes management provisions based upon the proposal submitted with their grazing lease application.
2. That the board finds IWP's appeal of improvement crediting moot.

DISCUSSION: Governor Kempthorne asked how long Pickett Ranch has held this lease. Mr. Biladeau stated that the Ranch has held the lease for thirty or forty years and that the Ranch has a good management record.

Controller Williams commented that the evaluation report of the conflict lease is one of the best reports the department has presented. It lists the relative merits of both sides. It is very unusual not to accept the high bid unless you have really good reasons. And those reasons have to be in the interest of the endowment. The department has articulated in its report some substantial reasons. It would be a management nightmare for \$100 a year more.

Next, Governor Kempthorne invited representatives of Pickett Ranch to address the board.

AUDIENCES WITH THE BOARD

AUDIENCE WITH THE BOARD: Mr. Don Pickett, Pickett Ranch, was granted an audience with the board.

Mr. Pickett: Mr. Pickett expressed thanks to the board for allowing this audience. He also expressed thanks to the department for the confidence they have shown in the practices of Pickett Ranch.

Mr. Pickett stated to the best of his knowledge Pickett Ranch (Ranch) has been a tenant on the heart of this lease since at least the mid 1930s. This area comprises the heart of many AUMs and deeded acres that the Ranch owns both on the Idaho and Utah sides of the border. Mr. Pickett feels this comprises the heart because the Ranch has voluntarily rested this area as recently as the year 1999 and the area is used as a supplement to the other surrounding areas to avoid overgrazing. Mr. Pickett feels he can confidently say that the Ranch has been a good steward of not only the state endowment lands but of the BLM and private lands surrounding the area because of the availability of this state lease to draw from in time of need.

Mr. Pickett stated that he has a few concerns that need to be addressed. The Ranch has had some dissatisfaction with the department's proceedings and that dissatisfaction has been expressed on the record. First of all the Ranch was disappointed that they bid \$13,000 when they would have stopped at \$5,000 had they been given an opportunity to review a public record, which was the proposed management plan submitted by Idaho Watersheds Project, just moments prior to the bidding. The Ranch was denied that opportunity. However the Ranch is willing to waive this portion of its argument before the Land Board and is willing to proceed with the bid of \$13,000 in an effort to bring these proceedings to an end.

Secondly, the Ranch feels that Mr. Marvel's appeal on behalf of Idaho Watersheds Project was untimely. Mr. Pickett stated that the Ranch made a timely objection to IWP's untimely appeal only to find that the department had rendered a final decision. That final decision indicated what the outcome would be, which was more than a \$3,000 reduction in the Ranch's creditable improvements. The Ranch feels that the department's action was inappropriate and that this issue should not have come up for discussion pending a final decision and hearing by the board.

Mr. Pickett stated that the Ranch believes it is a qualified applicant. The Ranch has demonstrated in its management proposal a desire to use the land as it has been used in the past. The Ranch believes that in ten, twenty or thirty years into the future, the land will look in as good or better shape than it does today.

Mr. Pickett stated that the Ranch feels that if this lease is awarded to IWP it will cost the endowment fund much more money than it would cost if the lease were awarded to the Ranch. Mr. Pickett provided his reasons for this statement.

- Unique characteristics – The endowment land consists of acreage that tends to stay green much longer in vegetation than all of the surrounding area. Because of that fact, in the early 1970s Ennis Pickett requested from the State Land Board, and from the BLM, an opportunity to put a fence around the entire enclosure to keep livestock from converging on this greener acreage and hurting it. Ennis Pickett's request was approved in the form of an agreement with the BLM.
- Fencing – The Ranch agreed at that time to fence a substantial part of the area and to maintain about five and one half miles of that fence. Acreage on the east side goes through some private land. Mr. Pickett commented that without a working relationship with the private landowner, he doubted that the state would be able to enforce maintenance of the fence through purely private ground. Pickett Ranch continued to fence around the north and west portions of the acreage.

The fence on the rest of the acreage is maintained by BLM permittees and goes through a lot of state ground.

Jurisdictional issues present problems in maintenance of the fence absent an agreement of some sort with the BLM.

- Agreement with the BLM – In order for the BLM, under their own code of federal regulations, to enter into a new agreement, it is critical that title 43 be reviewed to determine the required elements. There are four elements.
 1. ***The proposal must be in harmony with management of BLM objectives.*** Mr. Pickett stated that the BLM's objectives are roughly identical to the state's objectives and that is that the land is classified for grazing domestic livestock. IWP does not intend to graze domestic livestock. The Ranch believes that if IWP does not graze domestic livestock, IWP is not a qualified applicant.
 2. ***The proposal must be compatible with existing livestock operations.*** The BLM has no authority to enter into a new 10-year agreement with the state unless the new plan is compatible with existing livestock operations. Pickett Ranch contends that IWP is not compatible with the livestock operations of the entire state.
 3. ***The proposal will ensure orderly administration of the range.*** Pickett Ranch does not believe that IWP will ensure orderly administration of the range, particularly with regard to maintenance.
 4. ***The proposal will ensure a fair and equitable operation and maintenance of improvements.*** IWP's proposal does not offer to do any maintenance whatsoever. If maintenance is not taken care of, the Ranch is concerned that conditions of the early 1970s will reoccur.

Mr. Pickett also questioned IWP's ability to deal with stray livestock. He wondered how IWP would be able to identify and move livestock. He feels this issue would require a lot of Department of Lands managerial time.

In closing, Mr. Pickett referred to the recent Idaho Supreme Court decision in 1999 giving the board broad discretion in determining what constitutes long-term financial return to the schools. Pickett Ranch believes that its bid was competitive.

DISCUSSION: Superintendent Howard asked if Pickett Ranch has a forward-looking plan for this ten-year lease. Mr. Pickett responded yes. Pickett Ranch has submitted a detailed management proposal.

AUDIENCE WITH THE BOARD: Mr. Jon Marvel, Western Watersheds Project, formerly Idaho Watersheds Project, was granted an audience with the board.

Mr. Marvel: Mr. Marvel provided a written statement and handouts to be included into the official record. Mr. Marvel stated that a water quality analysis was completed last summer at Cold Creek on the Robinson Hole lease. That analysis indicated a presence of up to 86,000 parts per hundred milliliters of fecal coliform bacteria from cattle waste. Mr. Marvel stated that amount of fecal coliform bacteria is a clear violation of state water quality standards.

Mr. Marvel commented that he feels auctions have raised significant funds for the school endowment. Western Watersheds Project bid \$14,000. Mr. Marvel stated that \$14,000-figure far exceeds the ten-year lease fee the board would receive without an auction. Mr. Marvel stated he has heard repeatedly today that Western Watersheds Project is not qualified as an organization to apply for this

lease. Department staff has concluded that Western Watersheds Project's proposal is not in compliance with board rules and the regulatory structure of the department.

Mr. Marvel suggested that if the board concurs with the department then no auction should have been held and Mr. Pickett could have saved his \$13,000. Mr. Marvel cautioned the board that if auctions are held, and then the department claims that one participant is not a legal applicant to hold the lease, the board's decision may reflect an arbitrary character under the law.

In regard to the classification of leases for grazing, Mr. Marvel stated that there have been, and remain, over 30,000 acres of lands leased to the Idaho Department of Fish and Game and another several thousand to the Idaho Department of Parks and Recreation as grazing leases that are not grazed by livestock. Mr. Marvel stated he has yet to see the department send out a recommendation, or any kind of management directive, stating that these leases are subject to a greater risk of catastrophic wildfire or to the spread of noxious weeds, or that these leases require greater management on the part of the department, at any time. Mr. Marvel stated he would say that the staff report is, "at the least, selective and, quite probably, unequal protection under the law."

AUDIENCE WITH THE BOARD: Mr. Laird Lucas, Attorney for the Land and Water Fund of the Rockies and for Western Watersheds Project, formerly Idaho Watersheds Project, was granted an audience with the board.

Mr. Lucas stated he wanted to make sure that the Land Board understood the importance of the issue of holding contested case hearings. He stated it is his position that contested case hearings are required under the Idaho APA. Mr. Lucas stated he needs a process to be able to cross-examine witnesses and to get to the facts. In his opinion, Mr. Lucas stated that the board is being asked to make factual determinations and the current forum is not well suited to do that.

Addressing the board, Mr. Lucas asked to have Mr. Biladeau sworn in as a witness so that Mr. Lucas could cross-examine him about the board's report. Mr. Lucas stated he believes there are significant factual issues that the board needs to start understanding and that under the contested case proceeding he would be able to call witnesses and to cross-examine them under oath in a trial-type procedure. Mr. Lucas asked for the board's permission to begin that process.

At this point, a brief recess was taken.
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DISCUSSION: Governor Kempthorne asked Mr. Lucas to restate his request.

Mr. Lucas: Mr. Lucas stated he requests an opportunity to initiate contested case proceedings in this matter by swearing in Mr. Biladeau so that he can be cross-examined about the basis for the staff's recommendations to the board. Mr. Lucas suggested an alternative would be for the board to recess and ask that an administrative law judge be appointed to go through the process. Mr. Lucas stated that if there is to be a real fact-finding inquiry, he would have the opportunity to cross-examine and to present evidence. Mr. Lucas stated he believes this process would be better handled by an administrative law judge but in the absence of that option, he would like to proceed with the process in front of the board.

DISCUSSION: At this point, Governor Kempthorne called upon Mr. Steve Schuster, Deputy Attorney General, Department of Lands.

Mr. Schuster: Mr. Schuster stated that the Land Board has rules of practice and procedure set out in the IDAPA. Those rules state specifically that the Land Board meetings are not contested cases. If a party requests, or feels that they have a right to, a contested case, the rules of practice and procedure specify the pleadings and documents and the advance notice that they are to provide to

the department. That has not been provided in this case. Therefore, the request is procedurally improper by the board's rules. Mr. Schuster stated that the request has not been properly made and it is improper to cross-examine an individual without any advance notice. Mr. Biladeau was not given the opportunity to properly prepare to help him answer those questions.

DISCUSSION: Based on Mr. Schuster's opinion, Governor Kempthorne stated that Mr. Lucas' request to cross-examine Mr. Biladeau was denied.

Controller Williams offered his opinion that the board accept the department's recommendation for several reasons. One reason is that Western Watersheds Project has clearly stated it does not intend to graze livestock on the state land. They have stated that they intend to use the land for conservation purposes. Such proposed uses are contrary to the IDAPA rules and grazing lease attachment which indicates that the lands should be leased for the purpose of grazing and any other use would require written approval from the director.

For Western Watersheds Project to effectively achieve its goal of no livestock grazing on state land, the land would need to be fenced separate from the BLM land. Fencing the state land would encumber the land's future value. Western Watershed Project's management proposal fails to address important issues in land management, such as reducing fire severity, maintaining plant vigor or maintaining soil stability.

The grazing management plan implemented by Pickett Ranch within the Robinson Hole allotment has resulted in riparian and upland areas that are in proper functioning condition. Pickett Ranch has been a good long-term tenant. The additional expenses incurred by department staff in administering a grazing lease to a non-grazer would exceed the \$100 per year difference in the submitted bid and would result in a net loss to the endowment. Controller Williams believes that accepting the department's recommendation is applying common sense and is the action that a reasonable land manager would take as the trustee for the benefit of beneficiaries.

BOARD ACTION: A motion was made by Controller Williams to accept the department's recommendation. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0, with Dr. Howard voting aye via conference phone. Attorney General Lance was absent for this vote.

18. WITHDRAWN

Review Sulphur Creek Livestock Lease Cancellation/Reinstatement – Staffed by Tracy Behrens, Range Management Specialist – Presented by Jay Biladeau, Assistant Director, Lands, Range, Minerals

BOARD ACTION: This agenda item was withdrawn.

• INFORMATION AGENDA

Acting Director Wiggins briefed the Land Board on the Information Agenda item. No Land Board action is required on the Information Agenda.

19. Timber Sale Activity Report

A motion was made by Secretary of State Cenarrusa to resolve into Executive Session at 10:45 a.m. Controller Williams seconded the motion. The motion carried on a vote of 4-0, with Dr. Howard voting aye via conference phone. Attorney General Lance was absent for this vote.

- **EXECUTIVE SESSION**

- A. To Consider Acquiring an Interest in Real Property Which is Not Owned by a Public Agency, Idaho Code § 67-2345 (1)(c)** – *Presented by Kent Nelson, Deputy Attorney General and Perry A. Whittaker, Chief, Bureau of Real Estate*
- B. To Consider Personnel Matters, Idaho Code § 67-2345 (1)(b)** – *Presented by Winston Wiggins, Acting Director*

Upon unanimous consent, the board resolved back into Regular Session at 11:35 a.m. There being no further business before the board, the meeting adjourned at 11:35 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

_____/s/
President, State Board of Land Commissioners and
Governor of the State of Idaho

_____/s/
Pete T. Cenarrusa
Secretary of State

_____/s/
Winston A Wiggins
Acting Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the May 8, 2001 regular Land Board meeting.